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Attorneys for Defendant
AFFIRM ENTERTAINMENT, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY HOLMES, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

AFFIRM ENTERTAINMENT, INC.,

Defendant.

Case No. 2:23-cv-00838-TLN-AC

**STIPULATION TO SET BRIEFING SCHEDULE
FOR MOTION TO TRANSFER AND
EXTENSION OF DEFENDANT AFFIRM
ENTERTAINMENT, INC.'S RESPONSE
DEADLINE; ORDER**

District Judge: Troy L. Nunley
Action Filed: October 3, 2022

STIPULATION

Plaintiff Kelly Holmes and Defendant Affirm Entertainment, Inc. (“Defendant,” together, the “Parties”) hereby, by and through their counsel, stipulate as follows:

WHEREAS, pursuant to prior stipulation under Local Rule 144(a), Defendant’s deadline to respond to Plaintiff’s First Amended Complaint was extended by 22 days to June 1, 2023 (ECF 4);

WHEREAS, Defendant intends to file a motion to transfer this matter to the Central District of California (the “Motion to Transfer”) pursuant to a mandatory forum selection clause in the Terms of Use that Defendant contends Plaintiff assented to (the “Terms”);

WHEREAS, Defendant then intends to file a motion to compel arbitration in Los Angeles, California pursuant the mandatory arbitration clause in the Terms that requires arbitration to occur in that jurisdiction;

WHEREAS, the Parties have been actively meeting and conferring to see if they could reach agreement on the issue of transfer or arbitration, including, if necessary, the sequencing of such issues before the Court;

WHEREAS, the Parties could not agree on transfer or arbitration, but agreed that they should sequence these issues before the Court;

WHEREAS, Plaintiff’s counsel has met and conferred while traveling internationally;

WHEREAS, Plaintiff intends to oppose the Motion to Transfer, including on the basis that Plaintiff contends she did not assent to the Terms of Use; and

WHEREAS, the Parties believe that it will save Court and Party resources to resolve the anticipated Motion to Transfer before resolving motions under Federal Rules of Civil Procedure, Rule 12(b), including because, if the Motion to Transfer is granted and arbitration ultimately compelled, a “12(b)” motion would be mooted;

WHEREAS, for these reasons, the Parties seek to set a schedule for the orderly briefing of the Motion to Transfer and to extend the deadline for Defendant to respond to Plaintiff’s First Amended Complaint until after resolution of such motion; and

WHEREAS, the Parties were only able to reach agreement on this stipulation on May 26, 2023 and filed it as soon as possible thereafter;

NOW THEREFORE, the Parties stipulate as follows:

- Defendant's deadline to file the Motion to Transfer is June 8, 2023;
- Plaintiff's deadline to file any opposition to the Motion to Transfer is June 29, 2023;
- Defendant's deadline to file a reply in support of the Motion to Transfer is July 20, 2023; and
- Should the Court deny the Motion to Transfer, Defendant's deadline to respond to the First Amended Complaint, including to file any motions under Federal Rule of Civil Procedure, Rule 12, is reset to three weeks following an order on the Motion to Transfer.

Dated: May 27, 2023

COOLEY LLP

By: /s/ Kyle C. Wong
Kyle C. Wong

Attorneys for Defendant
AFFIRM ENTERTAINMENT, INC.

Dated: May 27, 2023

SHAMIS & GENTILE, P.A.

By: /s/ Andrew Shamis
Andrew Shamis

Attorneys for Plaintiff
KELLY HOLMES.

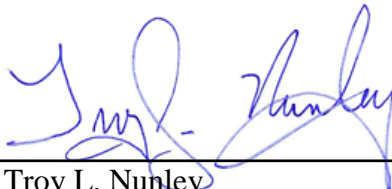
ORDER

Pursuant to stipulation, and good cause showing, it is ORDERED that:

- Defendant's deadline to file the Motion to Transfer is June 8, 2023;
- Plaintiff's deadline to file any opposition to the Motion to Transfer is June 29, 2023;
- Defendant's deadline to file a reply in support of the Motion to Transfer is July 20, 2023; and
- Defendant's deadline to respond to the First Amended Complaint, including to file any motions under Federal Rule of Civil Procedure, Rule 12, is reset to three weeks following an order denying the Motion to Transfer.

IT IS SO ORDERED.

DATED: May 30, 2023



Troy L. Nunley
United States District Judge